

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3021 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

MD AGENCY

Versus

STATE OF GUJARAT

Appearance:

MR BD KARIA for Petitioner

MR ASIT DESAI, ASSTT. GOVT. PLEADER for the Respondents.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 18/02/97

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned Assistant Government Pleader Shri Asit Desai for the

Respondents.

2. Shri Ratilal Mahadevji Gandhi of Amreli has filed the present petition to challenge the orders passed by the Collector and the Deputy Secretary of Food and Civil Supply Department respectively on 22.7.1994 and 1.1.1996.

3. The petitioner is carrying on his business in the name of M.D.Agency at Kansara Bazar, Amreli. He was holding a licence issued under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order issued under the Essential Commodities Act by the State of Gujarat. On 1st July 1994, respondent No.3 - District Civil Supply Officer of Amreli visited his shop. At the time of the said visit, he found that the petitioner had committed the following irregularities:

- (1) That on the cash memos, licence number was 201 of 1983 instead of licence No.14 of 1991,
- (2) That khandsari was sold in the months of February and March 1994 though the petitioner was not holding a licence for stock and sale of khandsari,
- (3) That there were no signatures of the purchasers on the cash memos issued by the petitioner to his customers and there were no licence number in the cash memos issued by him to his customers.

4. At the same time, he was found in possession of 97 bags of sugar and the said sugar contained in 97 bags weighing 9700 kgs. worth Rs.1,42,590/was seized. Thereafter, a show cause notice was issued to the present petitioner mentioning the above three defects to show cause as to why action of confiscating the sugar of 97 bags should not be taken against him for the commission of the said irregularities.

5. The petitioner gave his reply. In the reply he contended that he is a petty trader and he had obtained printed bill-books in the year 1983 and those printed bill-books were bearing his old licence No.201 of 1983. When he renewed his licence, his old number was changed to 14 of 1991. It did not strike to him to mention the said new number on the cash memos and that it was a bona fide mistake on his part in not rewriting the licence number after renewal of his licence. As regards sale of khandsari in the months of February and March 1994, he explained that he was holding licence to sell sugar and therefore he thought that he could also sell khandsari

sugar and he had no idea that a separate licence for sale of khandsari ought to have been obtained by him or to get necessary endorsement on his licence to deal in khandsari also, and that he would do the needful in getting the correction done in his licence and without carrying out the said correction he will not deal in khandsari. As regards the third irregularity, he contended that through oversight and mistake signatures of customers were not obtained on the cash memos but there was no illegal dealing by him in the said commodity. Therefore, in the circumstances, he requested to pardon him and not to take any action against him.

6. After considering his explanation, the Collector passed his order on 22nd July 1994 and he confiscated only 10% of the seized stock of sugar worth Rs.14,259/and released the remaining seized stock.

7. The present petitioner preferred an appeal to the Deputy Secretary of Food and Civil Supply Department against the said order of the Collector, but the said appeal was dismissed by confirming the order passed by the Collector and hence the petitioner has come before this court.

8. As regards non-obtaining signatures of the customers on the cash memos and not writing the licence number on the cash memos, the appellate authority has noted that they are technical offence. The Collector who passed the initial order had treated all the irregularities as technical in nature and therefore had ordered to confiscate only 10% of the stock seized from the present petitioner.

9. It is very pertinent to note that it is not a claim of the Department that the Department had received any complaint against the present petitioner that the petitioner was dealing in blackmarketing. The shop of the present petitioner was not also inspected by the Food Inspector on account of receiving any complaint against the present petitioner but it was a routine checking. Therefore, in the background of the above circumstances, it would be quite clear that it is not a case of the Department that the present petitioner had misused the licence in his favour by either indulging in blackmarketing or creating artificial shortage of the essential commodities. Therefore, this aspect will have to be borne in mind.

10. As regards the first irregularity, it is the admitted fact that the cash memos were bearing licence

No.201 of 1983. Licence No.201 of 1983 is also admittedly the old licence number of the petitioner. The explanation given by the petitioner that cash memos were obtained by him in the year 1983 and therefore those cash memos continued to have the said old licence number on the cash memos has not been rejected by the Department by holding that that claim of the petitioner is false. It is not a case of the Department that the petitioner has sold goods under a licence which was belonging to some other trader or with a view to see that he is not held responsible for the sale of the said goods. Therefore, in the circumstances, the irregularity in continuing the old licence numbered cash memos would be a mere technical irregularity and there was no intentional breach of the condition of licence so as to act dishonestly.

11. It is not in dispute that in the months of February and March 1994 the present petitioner had sold or had traded in khandsari as well as sugar. The said dealing of the present petitioner could be traced by officers of respondent No.3 on the strength of cash memos issued by the present petitioner. It is not a case of the Department that the petitioner had, in fact, sold khandsari under the title of sugar. If the petitioner had sold khandsari by describing or titling it as sugar, then one can say that the petitioner has misbranded an article in order to gain benefit in difference of price of the two. Khandsari is a variety of sugar though it could not be said to be pure sugar. Therefore, in the circumstances, when there was no cheating by the present petitioner and when the petitioner had openly mentioned in his cash memos that he was selling khandsari to the customers, it could not be said that the petitioner had committed any serious offence or serious irregularity. Therefore, that irregularity will have to be also treated as a technical irregularity. That is also quite obvious from the explanation given after the irregularity was detected.

12. As regards the third irregularity, the Collector as well as the appellate authority has found that it is also a technical irregularity.

13. Now, the goods seized from the shop of the present petitioner were of sugar. It is not in dispute that the petitioner was holding a licence to stock and sell sugar. It is not the claim of the Department that the petitioner had committed any illegality or irregularity in respect of the stock in his shop. When the petitioner was having a licence to stock and sell sugar and when the petitioner had not committed any

breach of the condition of the licence issued to him for the said essential commodity, the Department had no authority to seize the goods and then to pass further order of confiscating the said goods in toto or in percentage. As regards the commission of the irregularity in selling of khandsari without licence, it would be open to the Department to take any other action of prosecuting him or confiscating his deposit or to cancel his licence. The Clauses No.9 and 10 of the Gujarat Essential Articles (Licence Control and Stock Declaration) Order, 1981 (hereinafter referred as the said Order of 1981) provide for cancellation of licence and forfeiture of security deposit for the contravention of the provisions of said Order of 1981. Whereas Section 7 of the Essential Commodities Act, 1955 provides for punishment for contravention of the said Order of 1981. The Clause No.26 (1) (iv) (a) empowers the Civil Supply Officer not below the rank of a Supply Inspector or any Revenue Officer not below the rank of Deputy Mamlatdar to seize any stock of essential articles in respect of which contravention has been or is about to be committed. If the show cause notice issued by the Department is seen, it is nowhere claimed that 97 bags of sugar were seized on account of the seizing officer had reason to believe that the contravention of the said Order of 1981 was about to be committed. What is alleged in the show cause notice is that he had already committed the 3 (three) contraventions of irregularities mentioned in the said show cause notice. Thus the Department has no authority to seize the goods in respect of which there was no commission of any contravention of the said Order of 1981. Therefore, in the circumstances, I hold that the order passed by the Collector as well as the appellate authority in confiscating the sugar is illegal and improper and therefore the same will have to be quashed by allowing the present petition.

14. I accordingly allow this writ petition. Rule is made absolute with no order as to costs.